

Victim Assistance Involvement

Trial Advocacy Workshop November 19-21, 2014

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- I. Victim Assistance
 - a. Victim Advocates
 - i. Police Department
 - ii. Attorney's Office
 - b. Utah Crime Victims Legal Clinic
 - i. www.utahvictimsclinic.org
 - c. Utah Office for Victims of Crime
 - i. www.crimevictim.utah.gov
 - d. VINE
- II. Source of Victim Rights
 - a. Article I, Section 28 of the Utah Constitution
 - i. The victim has a right to have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider, without evidentiary limitation, reliable information concerning the background, character, and conduct of a person convicted of an offense
 - ii. Not in capital cases
 - iii. Privileges still apply
 - b. Rule 35 of the Utah Rules of Criminal Procedure
 - i. The Prosecuting Agency SHALL
 - 1. inform all victims and subpoenaed witnesses of their responsibilities during the criminal proceedings.
 - 2. inform all victims and subpoenaed witnesses of their right to be free from threats, intimidation and harm by anyone trying to obstruct the trial
 - 3. if requested, provide notice to all victims of the date and time of scheduled hearings and their right to be present during those proceedings
 - 4. unless they are subpoenaed to testify as a witness and the exclusionary rule is invoked.
 - 5. Victims are responsible for providing the prosecuting agency and court with their current telephone numbers and addresses.
 - ii. Upon request the prosecutor shall explain to the victim:
 - 1. that a plea agreement involves the dismissal or reduction of charges in exchange for a plea of guilty
 - 2. identify the possible penalties which may be imposed by the court upon acceptance of the plea agreement.
 - 3. At the time of entry of the plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been

contacted and an explanation of the plea bargain has been provided to the victim or the victim's legal guardian prior to the court's acceptance of the plea.

- a. If the victim or the victim's legal guardian has informed the prosecutor that he or she wishes to address the court at the change of plea or sentencing hearing, the prosecutor shall so inform the court.
 - iii. The court shall not require victims and witnesses to state their addresses and telephone numbers in open court.
- c. Utah Code §77-37-1 thru §77-37-5
- i. "Utah Crime Victims' Bill of Rights"
 - ii. Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process.
 - iii. The court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern a defendant's right to a speedy trial.
 - iv. State v. Harrison, 2001 UT 33
 1. "the need for a victim's advocate or other support person to accompany a witness while testifying decreases with the increasing maturity of the witness. However, absent a showing of prejudice, the matter is one best left to the sound discretion of the trial court after taking into consideration the age, maturity, emotional stability, and rigors facing a particular child witness, among other factors. These must be weighed against any appearance of inappropriate bolstering of the testimony by the presence of the support person, and any likelihood of interference with the testimony." ¶12
- d. Utah Code §77-38-01 thru §77-38-14
- i. "Rights of Crime Victims Act."
 - ii. Initial notice to victim within 7 days of filing charges
 - iii. Where the number of victims exceeds 5, court may limit in-court oral statements from victims to a few "representative" statements
- e. Utah Code §77-38a-101 thru §77-38a-601
- i. "Crime Victims Restitution Act"
 - ii. State v. Brown, 2014 UT 48
 1. "We conclude that a crime victim has limited-party status under Utah Code Title 77, Chapter 38a and related provisions, and thus has standing to file a request for restitution."
 2. "we interpret the governing statutes to allow restitution only for the pecuniary damages that a victim could recover in a civil action arising out of the defendant's criminal conduct. And ... the travel expenses and lost wages sought here would not be available in such a proceeding" (sexual assault case victim requesting lost wages and travel expenses for court)

- f. Utah Code §63M-7-501 thru Utah Code §63M-7-525
 - i. "Crime Victims Restitution Act."
 - 1. Claimant can be victim, dependent of deceased victim; or representative of victim
 - 2. Ineligible Claimants:
 - a. Accomplice
 - b. Victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws
 - c. Persons injured while violating parole or probation or incarcerated at the time
 - 3. Criminal conduct must have been reported to law enforcement
 - 4. Claimant or victim shall cooperate with law enforcement and prosecuting attorneys in their efforts to apprehend or convict the perpetrator
 - 5. Irrelevant whether perpetrator arrested, prosecuted, or convicted
 - ii. Limitations:
 - 1. \$25,000 in the aggregate
 - 2. Homicide, attempted homicide, aggravated assault, or DUI offenses:
 - a. \$50,000 in the aggregate
 - b. \$25,000 for Nonmedical expenses
 - 3. Reimbursement:
 - a. Victim cannot discharge a claim (i.e. through a civil suit) without written permission from the state
 - iii. Source:
 - 1. Surcharge on all court fines
 - 2. Misc budget items
- III. Summary of Victim Rights
- a. The right to **privacy**
 - b. The right to **be heard** at sentencing
 - c. The right to be **informed** and **assisted**
 - d. The right to a **speedy resolution** of their case
 - e. The right to **be free from threats and intimidation**
 - f. The right to **restitution** and **reparations** for their losses
 - g. The right to **notice** of all important criminal justice proceedings
 - h. The right to **be present** in the courtroom for all important hearings
 - i. The right to be treated with **dignity, respect, courtesy, and sensitivity**
 - j. The right to an **explanation** of the legal proceedings & plea negotiations